IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.34 OF 1991

John Louis Araujo of Bombay
Indian Inhabitant, residing
at Luminus Pr.Co-operative
Society Limited, Flat No.1,
First Floor, 50, Capel Road,
Bandra, Bombay- 400 050. .. Petitioner

v/s.

Allahabad Bank, a Banking
Company constituted under the
provisons of Banking Companies
(Acquisition & Transfer of
Undertaking) Act, 1970 having Zonal
Office at Manish Commercial
Centre, 215-A, Dr. Annie Besant
Road, Worli, Bombay-25 and
Head Office at 2, N.S.Road,
Calcutta-700 000. .. Respondent

Mr.K.S.Bapat with Mr.T.R.Yadav for the petitioner.

Mr.J.S.Saluja i/by M/s.M.V.Kini & Co. for the respondent.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 30th June, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

Allahabad Bank is a Banking Company constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. The petitioner joined the service of Allahabad Bank in the year 1956 much before it's nationalisation. The Bank of California, Bombay Representative Office offered to the petitioner an assignment in that bank somewhere in the year 1987. The petitioner at that time was working as Chief Manager of the

respondent's international branch at Cuffe Parade, Colaba, Mumbai. By his letter dated 2nd May, 1987, the petitioner communicated that he intended to go in for voluntary retirement with effect from 15.5.1987. He also indicated that his communication may be treated as his letter of resignation.

2. In response to his letter dated 2nd May, 1987, the petitioner was informed that the Head Office was not in a position to waive the requisite period of three months as required under the provisions of clause 20(2) of the Allahabad Bank Officers' Service Regulation, 1979/1983. The petitioner was also informed that as he did not ask for prior permission to join the Bank of California and no permission can be granted to him at this stage.

3. The petitioner then on 18.5.1987 wrote a letter to the Assistant General Manager, Western Zonal Office of the bank to recommend to the Head Office to reconsider the petitioner's case as very special case and waive the notice period.

4. The petitioner reiterated his request to the Assistant General Manager by his letter dated 12th June, 1987.

5. By his letter dated 8th July, 1987, the petitioner wrote to the General Manager

(Organisation) that as the Bank of California was pressing him for early acceptance of their offer of employment, his request for voluntary retirement with pension benefits may be accepted. This request was again reiterated by the petitioner by his letter dated 22nd July, 1987.

6. By the communication dated 29th July, 1987, the petitioner was informed of the telex message received from the head office. The telex message reads thus-

> "REFERRING YOUR LETTER NO.WZO/EST/JLA/592 DATED 23.7.87, PLEASE OBTAIN FROM SHRI JOHN LOUIS ARAUJO, CHIEF MANAGER, INTERNATIONAL BRANCH A LETTER STATING SPECIFICALLY WITHOUT ANY AMBIGUITY WHETHER HE DESIRES TO RESIGN OR RETIRE(.) HE MAY ALSO BE ADVISED THAT IN CASE HE DESIRE TO RESIGN, HE WILL NOT BE ALLOWED LEAVE ENCASHMENT(.)"

7. By his communication dated 29th July, 1987, the petitioner in unequivocal terms represented to the bank that his letter dated 2nd May, 1987 may be treated as his resignation from service and that he be relieved from service at the close of work on 1.8.1987.

8. By the communication dated 1st August, 1987, the petitioner was informed that the bank has accepted his resignation at the close of business on 1st August, 1987. Thereafter, the bank released the terminal dues payable to the petitioner on his resignation.

9. The petitioner has approached this court for two reliefs (i) that the respondent-bank be directed to treat the petitioner as having voluntary retired and grant to the petitioner pension and (ii) that the respondent-bank be directed to pay to the petitioner a sum of Rs.38,000/- by way of encashment of 170 days privilege leave.

10. Mr.K.S.Bapat, the learned counsel for the petitioner submitted that such circumstances were created by the respondent-bank that the petitioner was left with no choice but to represent to the bank to treat his letter dated 2nd May, 1987 as a letter of resignation. According to the learned counsel, the letter dated 2nd May, 1987 ought to have been treated as letter of voluntary retirement. With regard to the payment of Rs.38,000/- by way of encashment of 170 days privilege leave, the learned counsel submitted that Rule 38 to the extent it lays down that all leave lapses on an employee ceasing to be in the employment is ultra vires the provisions of the Bombay Shops and Establishments Act, 1948.

11. We are not persuaded by the submissions of the learned counsel for the petitioner.

12. The correspondence that we have indicated above leaves no manner of doubt that the representation made by the petitioner to the bank in his letter dated 29th July, 1987 to treat his letter dated 2nd May, 1987 as his resignation was of his own volition and freewill. As a matter of fact, the petitioner in his letter dated 2nd May, 1987 made confusing and inconsistent statement. He stated in para 2 that he intended to go in for voluntary retirement with effect from 15.5.1987. In para 3 of the said letter, he, however, stated that his letter may be treated as letter of resignation. After some correspondence, the bank sought clarification from the petitioner as to whether he desired to resign or retire. The petitioner desired to resign and therefore, in his communication dated 29th July, 1987 he represented that his letter dated 2nd May, 1987 should be treated as his resignation. There is nothing that situation was created by the respondent-bank that the petitioner had to represent that his letter dated 2nd May, 1987 may be treated as resignation. Though the petitioner had been in the service of about three decades with the respondent-bank, he found his future and prospect bright in the Bank of California and decided to leave the respondent-bank. The respondent-bank declined to waive notice period that the petitioner wanted and we find nothing wrong in that. On clarification

sought from the Bank, the petitioner clarified that his letter dated 2nd May, 1987 be treated as letter of resignation. The Bank acted on that clarification and accepted his resignation. The act of resignation is volitional, of free choice and will by the petitioner.

13. The legal position is well established that the resignation cannot be equated with voluntary retirement. If any authority is needed for the proposition, we may refer to the judgment of the Supreme Court of India in the case of Reserve Bank of India and another v. Cecil Dennis Solomon and another, (2004)9 SCC 461. The Service Regulations do not provide for pension to an employee who had resigned. Obviously, therefore, there was no question of pension being paid to the petitioner. It is only because the petitioner was not entitled to any pension having resigned, he set up the case that his resignation be treated as voluntary retirement. That, in our opinion, has rightly been turned down by the respondent-bank.

14. As regards the contention that Rule 38 to the extent it lays down that all leave lapses on an employee ceasing to be in the employment to be ultra vires, the learned counsel sought to place reliance on the Bombay Shops and Establishments Act, 1948 (for short ‘the Act of 1948’).

15. Upon perusal of the Schedule II appended to the Act of 1948 that provides for exemption, we find that entry No.316 exempts the establishment of Allahabad Bank for the purposes interalia of sections 35, 36 and 37 of the Act of 1948. The petitioner is claiming encashment of privilege leave under sections 35, 36 and 37 of the Act of 1948 and in that light contends that Rule 38 of the Regulations 1979 is ultra vires. Since sections 35, 36 and 37 of the Bombay Shops and Establishments Act, 1948 are not applicable to Allahabad Bank, the question of declaring Rule 38 as ultra vires the provisions of the Bombay Shops and Establishments Act, 1948 does not arise. The contention is fallacious.

16. By virtue of Rule 38, the petitioner is not entitled to the encashment of privilege leave and his claim cannot be said to have been wrongly rejected by the respondent-bank.

17. Writ petition has no merit and is dismissed with no order as to costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)